Consumer Advocate's Interim Report

Auto Insurance

June, 2003

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103-06136/

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Introduction

I have been talking to Nova Scotians about the difficulties involved in stabilizing auto insurance rates for consumers since I was appointed Consumer Advocate on April 11, 2003. This public consultation on auto insurance closed on May 15. Based on the public submissions and on research, meetings, and discussions I have held with consumers and other interested parties up to this point, I will lay out some proposals for improvements and for future work on Nova Scotia's auto insurance system.

The people of Nova Scotia have told me that the auto insurance system in this province is broken. The roughly 3,000 people who have communicated with me say that the system is in serious need of an overhaul. The industry itself acknowledges a "crisis" and says it's time for action.

"We are all hoping that something can be done to protect Nova Scotians when it comes to insurance. We sit on pins and needles waiting to see if we will be renewed, how much it will cost, if there will be huge increases (even with no claims), and feeling powerless to do anything about it."

Consumer comment

My task is to represent the consumers' interest in the continuing discussion about auto insurance. I have tried to take a balanced approach, but my bias is in favour of the consumer, the people who are paying these increased rates.

What Has Been Done So Far

Car insurance is a multi-faceted and complex global industry. The problems affecting car insurance here are also being felt elsewhere. The province knows it must help Nova Scotians cope with these problems. This is what it has done so far:

The province asked the Utility and Review Board (UARB) to look at rising car insurance rates in February 2002.

It published "A Consumer's Guide to Buying Auto Insurance," which can be widely obtained from the Office of the Superintendent of Insurance and Access Nova Scotia offices across the province.

It asked people to suggest solutions on key aspects of auto insurance in its discussion paper *The Road Ahead*.

It appointed a consumer's advocate to listen to consumers and others with an interest in this matter and to report back.

It introduced legislation on May 5, 2003, to ensure no further rate increases were implemented during the "time out" while it was seeking responses from consumers and industry on the issues outlined in the discussion paper.

The Utility and Review Board released its decision on insurance rates. It found that rates were fair in light of the artificially low rate of return insurance companies had received over the past 10 years:

> *"It is the Board's view, after reviewing the evidence, that Government would be well justified in considering the desirability of alternative regulatory models or making other structural changes in the automobile insurance system in Nova Scotia that would ensure that drastic and sudden rate hikes of the sort recently experienced by Nova Scotians could not be visited upon them again."*

*"The nature of the Board's existing mandate pursuant to **S. 157** of the **Insurance Act** is such that any review conducted by the Board has to be carried out **"after the fact."***

UARB Report

The board also noted some concerns about discrimination, an issue that is of concern to many Nova Scotians:

> *"With respect to whether the rates are unfairly discriminatory, there is no question that rates are discriminatory based on a whole host of factors, such as age, location, etc. The Board has heard evidence that there may be unfair discrimination concerning rates for youths and seniors, but without further study and information it is not possible to reach any definitive conclusion in this regard."*

My Role as Consumer Advocate

It is my job to study ways in which we can work together to find answers to the urgent questions raised by the current situation and to propose methods for protecting the interests of all Nova Scotians who must buy mandatory coverage.

I have spoken to hundreds of Nova Scotians, business stakeholders, and community groups from across the province. I have reviewed hundreds of written responses that provide a broad spectrum of both concerns and possible solutions. Everyone agrees that change is needed.

My office is looking at solutions that have been tried in other jurisdictions to stabilize rising prices and give consumers more control over car insurance. We are working to learn from the experiences of others and, thus, to develop "made in Nova Scotia" or "made in Atlantic Canada" solutions that will work best for us.

What has struck me in discussing issues with a wide range of stakeholders is the impact that soaring rates have had on their businesses. Car dealers have noted that consumers are not buying and are changing their minds on purchases when they find out the cost of the insurance. The Greater Halifax Partnership has noted that the high cost of insurance cuts into other purchases that consumers might make, especially those around travel and other forms of entertainment.

The Standard Auto Insurance Policy

Car insurance is a contract required by law to cover consumers in an accident. As noted in *The Road Ahead*, the standard car insurance policy has four sections. Three of these sections are mandatory--you must have them to drive in this province.

"...while it is by law necessary to have vehicle insurance, there is no choice of options available to the consumer."

Consumer comment

A. Third Party Liability Insurance (Section A) protects you if you injure a person or property with your car. You must have a minimum of $200,000 in insurance to drive, but most Nova Scotians have $500,000 or $1,000,000 of this type of insurance. **Mandatory**	**B.** Accident Benefits (Section B) protect you or a passenger to cover the costs of medical or rehabilitation benefits, funeral expenses, and loss of income. You receive these benefits only if you have no other insurance plan, such as a disability plan at work. **Mandatory**
C. Loss of or Damage to Vehicle (Section C) covers loss or damage to your car in the event of an accident or loss, no matter who is at fault. This usually has a deductible of between $250 to $500 that you must pay. Section C coverage is often referred to as Collision and Comprehensive Insurance. **Optional**	**D.** Uninsured and Unidentified Auto Coverage (Section D) protects you if you are in an accident with an uninsured driver or an unidentified automobile. **Mandatory**

Key Consumer Values and Principles

Most consumers who communicated with me express deep concern over the increases in their rates: many Nova Scotians report increases of between 20 per cent and 110 per cent. A few say their rates are up by as much as 400 per cent. Many find it hard to understand such dramatic increases when they have no past claims and have not been convicted of offences. People also complain that the industry does not tell them why the increases are as high as they are or how decisions assigning them to a particular category of risk are made. They say this must change.

Trends in Consumer Concerns

While I have heard a wide range of concerns from Nova Scotians, most comments focus on four main issues.

" There are people out there who do not make a lot of money, who need their car to get to work and could end up without a job if the rates go up further. Is that what everyone wants - more people on the unemployment line due to auto insurance rates?"

Consumer comment

This is what I heard:

Unreasonable Rate Increase

A majority of respondents are dissatisfied at the level of increases in their auto insurance premiums upon renewal, particularly increases over the last two years. Many say that their rates are increasing despite having had no accidents or convictions. Increases are described as "unjustified," "irrational," and "suspicious." For many, the insurance bill is now proving to be a major financial challenge that threatens their lifestyle and even their livelihood.

Consumer Access to Information / Transparency

Consumers say that they are not given adequate access to the insurance industry's underwriting determinants, such as vehicle and driver ratings. Many have told me about inconsistent quotes and ratings from one company to another, or about increases that their brokers are unable to give reasons for. This lack of information and consistency has obviously frustrated consumers. However, I am encouraged by responses from the industry that indicate a willingness to increase transparency and provide consumers with the answers they seek.

Discriminatory Rules

"....males under 25 are all individuals and the ones with accident free perfect driving records and no claims should not be penalized because of the ones who are not accident free and /or have bad driving records."

Consumer comment

Many respondents believe that insurance companies discriminate against them based on age or sex. I have heard these concerns from both seniors and young drivers. They believe that their insurance premiums should be based upon their driving record and experience, rather than other factors.

Others claim discrimination based on factors such as area of residence or age of vehicle. Again, they feel their rates should be based on their driving records instead.

No-Fault Insurance

" The reasons for No-Fault insurance have not been justified"

Consumer comment

I have received a large number of written responses addressing the issue of no-fault insurance. Among these responses are more than 1000 postcards from individuals as part of a campaign organized by the Nova Scotia Coalition Against No-Fault Insurance. The coalition is concerned with the effect a no-fault insurance model would have on the rights of accident victims.

Other respondents, particularly those I have spoken with personally, appear to be evenly split in their support for the no-fault insurance model.

In reviewing the responses to the discussion paper and other public comments received, I recognize the fine balance that must be struck to ensure a viable, sustainable insurance system that is characterized by

" ..I think I've discovered the most frustrating experience for almost everyone in this:

No one knows what the rules are!"

Consumer Comment

- **Affordability:** Auto insurance is a mandatory product. Government must provide a legislative framework that ensures consumers receive reasonable coverage for a reasonable price.
- **Availability**: Auto insurance is required by every driver. Even high-risk drivers must be able to get insurance.
- **Transparency**: Consumers must know what rules are being applied when they purchase insurance and how these rules influence price. Consumers want the rules to be applied consistently.

Regional Approaches

Nova Scotia has been trying to harmonize its insurance system with that of the other Atlantic provinces for some time. I believe consumers would benefit from a harmonized approach to insurance rules. This would simplify the system and may result in cost savings.

The province must consider whether there are opportunities for regional harmonization of auto insurance and how it could position this issue for regional cooperation in the longer term. I realize there are ongoing discussions between Nova Scotia's Superintendent of Insurance and her Atlantic counterparts on this issue. I hope, in my final report, to expand on possible regional approaches coming out of these activities.

Comparing Nova Scotia's System to Other Provinces

A lot has been written and publicly debated about how Nova Scotia's auto insurance system compares with that of other provinces. My research has revealed that there are many variables--some obvious, and some not so obvious--that must be considered to get an accurate picture of the true pros and cons of the various provincial systems. Some of these differences are outlined in a table in Appendix I (page 14).

Auto insurance systems are expensive to administer. Private insurers cover costs through premiums and through investments. Many consumers have told me that they believe private insurance systems are passing high premiums on to consumers to cover financial losses experienced on the stock market. However, government run insurance systems also rely on premiums and investments to

pay for the system. In some provinces, this is supplemented through vehicle registration and driver's licence fees.

One thing is clear. So far, no province has a perfect system for consumers--one that offers the right mix of affordability, availability, and transparency, all features that consumers both demand and deserve.

Basic Themes and Recommendations

My recommendations focus on five basic themes:

1. Change the injury compensation system for pain and suffering
2. Improve accident benefits
3. Make underwriting rules transparent and fair
4. Improve the process for high-risk insurance
5. Continue the role of consumer advocate

"I am worried that if claims for pain and suffering are reduced and, subsequently, related premiums, then drivers will get the message that they can be as cavalier--or even reckless--in their driving habits as they wish."

One consumer comment on tort reform

1 Change the Injury Compensation System

Auto insurance has not changed very much since the *Insurance Act* first required mandatory coverage of automobiles. Only recently have experts in the industry started to look at what is covered, and whether it is really necessary.

From the beginning, auto insurance was designed to protect consumers from major loss of income, for both themselves and anyone who was injured in a motor vehicle accident. The concept of a deductible for some forms of insurance was always set out as a way for consumers to cover some of their own costs and to discourage frivolous claims.

Over time, there has been a shift in court decisions away from limiting compensation to major accidents causing significant hardships for the average family, to a greatly expanded interpretation of entitlement. This results in an expectation that insurance will cover every incident, no matter how insignificant. Consumers have talked openly about their frustration with people who abuse the insurance system and receive large payments for relatively insignificant injury or damage.

"We feel at the very least there must be an option put in place so that policy holders may waive the right to make soft tissue claims."

Consumer comment

Personal injury claims are being resolved at steadily increasing amounts. The assessment of minor injuries is subjective. Pain and suffering is difficult to prove; it is assessed in addition to actual loss and its evaluation tends to be variable from claim to claim even for similar injuries.

A key point noted in *The Road Ahead* is that although accidents had decreased in Nova Scotia, claims costs had increased substantially over an eight-year period for bodily injury claims.

This is what I heard:

I have heard from a variety of people with strong opinions on the right to be compensated for soft-tissue injuries.

Some people who have phoned or written to me claim to know people who have benefitted by making excessive and false claims against insurance companies.

One group of industry employees showed me recent video footage of three people who had sued for disability payments who were obviously very mobile and ambulatory. One man who called me demanded the government and industry fight against insurance fraud and noted that people in his area refer to making false claims as "auto lotto."

Soft tissue injuries: Injuries affecting the joints and muscles of the limbs, such as sprains, strains, and dislocations.

While it is not clear to me how widespread the problem might be, it is evident that consumers have an interest in seeing such behaviour curtailed.

On the other hand, some have suggested that soft tissue injuries are not the root of our current problem and that the companies wish to deprive Nova Scotians of the right to sue for pain and suffering while themselves retaining "banks of lawyers to beat us out of what we have legally coming to us."

I have also met with members of the legal profession, some of whom practice in the area of personal injury, who make a strong case that the right to sue should be preserved at any cost.

Some of my respondents argue that limiting soft tissue injury claims and getting lawyers out of the process would help drive down the cost of premiums and help stabilize prices. They say there must be other less costly ways to settle claims disputes between insurer and insured.

"I believe that the LEAST expensive insurance to Nova Scotians is the one that should be recommended."

Consumer comment

Many insurers feel that the compensation associated with minor injuries adds little value and only increases the costs to the majority of consumers. They want a system that responds to serious claims, not one that encourages litigation. They are concerned that often, despite very minimal damage to a vehicle, there is still a large claim for pain and suffering. Insurance companies have recommended that the injury compensation system be fundamentally

changed to limit the right to sue. Some restrictions on the right to sue already exist in five Canadian provinces: Manitoba, Saskatchewan, Quebec, Ontario, and, just recently, New Brunswick.

Although there is debate about how much compensation for soft tissue injuries has added to the insurance system's costs, there is no doubt that capping claims costs would reduce costs for insurance companies. However, it would be naive to simply assume that these savings would be automatically passed on to the consumer in the form of lower premiums. In addition, limits on the ability to claim general damages may not be in the best interest of consumers. A balance is required. As a result, I will be engaging in further consultation with consumers on this issue.

Over the next few weeks, I plan to study this issue more fully to be sure that whatever recommendation I make for reform sees benefits passed on to consumers. Effective reform must provide consumers with adequate coverage, must be affordable, and must be available. Consumers must understand the product they are purchasing and the benefits they will receive in an accident.

"The Board considers that the evidence is convincing that the principal cause of increased claim costs over the 1997-2001 period was claims for compensation for bodily injuries. The evidence examined by the Board shows that third party liability claim costs, and particularly, TPL bodily injury claim costs, have been increasing much faster than collision and comprehensive claim costs."

UARB Report on Auto Insurance Rates

This is what I heard:

Some Nova Scotians believe that no-fault insurance offers an answer to all the problems that exist in our system currently. Some told me they have lived in other jurisdictions where such a system prevails and they were happy with the insurance product and the costs and services associated with it. Others are not clear on how the system works, they don't know what no-fault actually means, and they don't know if it would be a good option for Nova Scotia. Overall, the people I spoke with are fairly evenly split on its effectiveness.

On the side opposing no-fault, I have received more than 1300 postcards from members of the Nova Scotia Coalition Against No Fault Insurance and hundreds of standardized and postage paid responses to the government's *The Road Ahead* document. The Coalition is clearly well organized and strongly opposed to no-fault insurance. The group has many supporters and was able to sponsor an appearance by American consumer advocate Ralph Nader in April of this year. I spoke to Mr. Nader privately before his speech for the Coalition and again by telephone from Washington, D.C., to discuss his opposition to a no-fault system.

I have also met with some seniors' organizations. Some of their members agree that no-fault is a worthy option, while others claim that fault in motor vehicle accidents should be determined and those responsible should be held accountable for their actions.

Residents of other provinces seem as evenly divided on no-fault as those in Nova Scotia.

Recommendation:

I am recommending that transparency for consumers be improved.

Over the long term, Government should research the viability of giving consumers the right to choose between different insurance packages that offer varying degrees of coverage for minor injuries, with appropriate differences in price.

2 Improve Accident Benefits

"I am shocked to learn how low the (accident) benefits are. No wonder people sue."

Consumer Comment

For many consumers, especially those who have health and sick leave insurance through their employment, accident benefits are usually not paid out by auto insurance companies. These benefits are paid only if the injured party has not been reimbursed for these expenses through some other insurance coverage. However, these benefits are very important for someone who is receiving Employment Insurance benefits or taking a year off from work and has not purchased any additional types of insurance.

Accident benefits currently vary across Atlantic Canada. It would make sense to ensure that any improvements that are implemented are done so in harmony with other Atlantic jurisdictions. The province should also make sure that changes are phased in, to ensure what was intended as an improvement doesn't inadvertently drive up costs for consumers. Adequate coverage must be balanced against reasonable costs.

This is what I heard:

Many consumers who responded to the discussion paper felt that Section B benefits should be improved even if it meant that there could be an increase in premiums.

The majority of those who responded to the survey agreed that

- medical payments should increase from $25,000 to $50,000
- funeral payments should increase from $1,000 to $2,500
- the basic death benefit should increase from $25,000 to $50,000
- the basic loss of income payment should increase from $140 per week to $300.00 per week for 104 weeks (two years).

The loss of income tended to be the most important benefit for most consumers.

Recommendation:

Section B benefits should be consistent across the Atlantic provinces. In the short term, Section B benefits should be adjusted to incorporate a cost of living increase. The province should introduce a plan for the long term that will phase in improvements in an effective manner.

3 Make Underwriting Rules Transparent and Fair

"I would like to see that itemized so that we can at least see why were being charged and, if necessary, question those values."

Consumer comment

Several provinces have passed legislation or regulations governing underwriting practices to ensure that these rules do not unfairly discriminate against individuals on the basis of factors that are unrelated to driving record, such as age. Rules can be prohibited if they are subjective, arbitrary, have no relation to the risk, or are contrary to public policy. Nova Scotia's underwriting rules currently do not have to be filed with the Superintendent of Insurance or the Utility and Review Board.

This is what I heard:

Most consumers who responded to the discussion paper felt that insurers unfairly discriminate on the basis of age and sex. Most insurance companies say that these factors are no longer as important as driving record, where you live, and how much you use your vehicle. Many consumers do not know what the rules are and how they impact their premiums.

Many consumers are concerned that they will face steadily increasing premiums after they reach the age of 65, when the majority of people are on fixed incomes. Some are concerned that these rules should not be in force without some type of review, as these rules determine rates.

Respondents have suggested a wide range of solutions to address this issue. The most common theme to come forward is the suggestion that industry be required to increase consumer access to information about how their insurance rate is determined and the factors considered. Some industry respondents have indicated a willingness to address this issue.

Recommendation:

Underwriting rules should face greater scrutiny. Rates and rules are intertwined in the auto insurance business. Consumers should be able to review these rules as public documents.

I would recommend that the Government pass regulations that would make underwriting rules more transparent for consumers. Insurance companies should be required to file rules with the province in the interim, and they should be made readily accessible to consumers on the website or through other means. The province should monitor the rules to ensure that they are not subjective, arbitrary, or discriminatory.

There must be more rigorous oversight of the industry, for the sake of consumers. Over time, Government should strengthen the Utility and Review Board's ability to respond to unfair or discriminatory underwriting rules. Rates should be approved, and underwriting rules should be transparent and understandable for all consumers. The province should consider establishing a separate board to review and monitor rates and underwriting rules for the industry, if it is determined that this system would provide the best protection for consumers.

4 Improve the Process for High-risk Insurance

Facility Association is a national, non-profit association of insurance companies that pool their resources and insure drivers who cannot otherwise get insurance. The Association is technically not an insurer. Its rates are approved by the Utility and Review Board. The use of the Facility Association has increased over the past 3 years, and "grey market" or near-Facility products have grown up to offer relief for those who have been paying high Facility rates.

" I was completely disgusted to realize that a small accident could have such an impact on our insurance. I feel like a common criminal, as that is how the insurance companies have treated us."

Consumer comment

This is what I heard:

Rules and rates are intertwined. Many consumers want greater transparency and longer notice when they are being put into Facility Association. They want to know how long they will remain in the risk category and the reasons for being given this status. They want to avoid being bumped into Facility at all costs.

Recommendation:

There must be greater transparency in the Facility Association process for insuring high-risk drivers. Consumers should have greater notice and information regarding the reasons for their placement in the Facility Association coverage.

I recommend that the province pass regulations that will ensure consumers receive immediate notice, followed by written confirmation, of the reasons why they are being placed in Facility Association. Facility Association rates should continue to be approved in advance by the UARB. Perhaps regulations should also restrict Facility Association to only one rate application per year.

For the long term, the province should explore the possibility of formalizing its relationship with the Facility Association through the placement of an Atlantic representative on their national board. This could help improve communication and understanding of the high risk insurance system for consumers.

5 Continue the Role of Consumer Advocate

During this process I have been struck with the level of dissatisfaction of consumers and the need for proactive monitoring of the insurance system to ensure it is serving consumers. The need for consumer education is imperative, and consumers should have the right to know how the system works. It is important that consumers know the "rules of engagement." Many of these changes can be brought about at little or no cost.

This is what I heard:

Consumers are deeply dissatisfied with the insurance system. Few feel their interests are being protected.

Recommendation:

Consumers need the support and guidance of an advocate to oversee their interests. The province should also incorporate the role of consumer advocate into future improvements to the auto insurance system.

I also recommend that the province continue to expand its education initiatives for consumers. "A Consumer's Guide to Buying Auto Insurance" is a clear, understandable document that has been widely used by consumers. The province should distribute this document more widely and make more information available through its web site. It should help drivers better understand the rules, their rights, and the benefits of the province's insurance system.

Next Steps

" I expect to pay an insurance premium that allows the provider to make a fair profit, and one that reflects the risk that they assume on my behalf. As the system now operates I am not sure that either parameter is being met."

Consumer comment

Insurance is an essential, expensive product. The complexity of the auto insurance market and the difficulties facing both consumers and the industry, after many years of market losses, have been strongly articulated by stakeholders in my discussions with them. The concerns of consumers are linked to the need for transportation for their work, to maintain the independence of seniors, to access key services and particularly in rural areas, and to provide a key link to the larger community.

Although my work is not complete, I believed it was important to report back to consumers on my findings to date. Over the next few months, I will continue to meet with consumers, and I will focus my research on a few key issues, including the impact of soft tissue injuries on the insurance system, the effect of underwriting rules on transparency, and the benefits of improved inter-provincial coordination. I also plan to explore how more information can get out to consumers through the Internet.

I understand that consumers need relief urgently on this issue. I also understand that there are no quick fixes. Making improvements to the province's auto insurance system will take time, but I believe there are some actions that Government can make soon to relieve the burden on consumers.

Some consumer information and protection can and should be implemented right now. The need is there. The authority is there. And it is needed whatever our final answers are.

Over the course of the next several months, I will continue the process of listening to consumers and other stakeholders. I expect to deliver my final report to consumers late this year.

Appendix I

Compulsory Minimum No-Fault Insurance Comparison Table

(2002)

Sask, Alta and Atlantic Provinces allow lawsuits for benefits over and above the no-fault minimums

	BC	Alta	Sask Tort	Sask No-Fault	Man	Ont	Que	NB*	NS	PEI	Nfld
Admin	Public	Private	Public	Public	Public	Private	Public	Private	Private	Private	Private
Med Payment	$150K	$10K	$20K	$5 M	No limit	$100K	No limit	$50K	$25K	$25K	$25K
Funeral Expenses	2,500	2,000	5,000	5,732	6,442	6,000	3,951	2,500	1,000	1,000	1,000
Maximum Disability Income											
% of income	75% of gross	80% of gross	$15.6K for total $7.8K for partial	90% of net	90% of net wages index.	80% of net	90% of net	N/A	N/A	N/A	N/A
Max/wk	$300	$300	N/A	$58K/yr	$63K/yr	$400	$53K/yr max	$250	$140	$140	$140
Home support per week	$145	$100	No	No	No	$185	No	$100	$70	$70	$70
Min. Liability 3rd Party	$200K	$200K	$200K	$200K	$200K	$200K	$50K	$200K	$200K	$200K	$200K
Right to sue	Yes	Yes	Yes ($5K deduct)	No with few excepts.	No	Yes (if meets thresh-old)	No	Yes	Yes	Yes	Yes
Average 2001 Benefit Paid	$2,223	$6,289	N/A	N/A	$2,403	$5,959	N/A	$5,795	$5,530	$3,419	$6,419

NB introduced changes that will cap the right to sue for soft tissue injuries in 2002. Regulations outlining this are expected on June 15, 2003.Manitoba only covers medical expenses not covered by the provincial health insurance program, that are approved under the insurance program. The permanent impairment payment went to a maximum of $118,192 in 2002. BC, Man, Sask are public with private competition for optional and excess coverage; PQ is private for property damage. (Source IBC)